

Service Date: September 17, 1999

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER OF the Petition of	)	UTILITY DIVISION
Ronan Telephone Company for Suspension of	)	
Provisions of the 1996 Telecommunications Act,	)	DOCKET NO. D99.4.111
pursuant to 47 U.S.C. § 251(f)(2) and 253(b)	)	ORDER NO. 6174b

ORDER ON MOTION TO QUASH SUBPOENA DUCES TECUM  
AND REQUEST FOR PROTECTIVE ORDER AND SANCTIONS

Background

On August 17, 1999 Ronan Telephone Company (RTC) applied for a subpoena duces tecum to be served on Blackfoot Telephone Cooperative (BTC). In its application RTC asserted that the subpoena was necessary to discover information and documents relevant to issues before the Public Service Commission (Commission) in this Docket. The Commission issued the subpoena on August 17, 1999 with a 20-day return date. Prior to the return date, on September 3, 1999, BTC filed a motion to quash the subpoena and requested a protective order and sanctions. RTC filed a response on September 10, 1999, and the Commission considered BTC's motion and requests at a regularly scheduled work session on September 14, 1999.

Discussion

The crucial issue here is whether the subpoena is reasonable in light of the purpose and scope of this Docket. This Docket is a petition by RTC pursuant to 47 U.S.C. § 251(f)(2), which reads in pertinent part as follows:

"(2) SUSPENSIONS AND MODIFICATIONS FOR RURAL CARRIERS. – A local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) to telephone exchange service facilities specified in such petition. The State commission shall grant such petition to the extent that, and for such duration as, the State commission determines that such suspension or modification –

"(A) is necessary –

"(i) to avoid a significant adverse economic impact on users of telecommunications services generally;

"(ii) to avoid imposing a requirement that is unduly economically burdensome; or  
"(iii) to avoid imposing a requirement that is technically infeasible;  
and

"(B) is consistent with the public interest, convenience, and necessity. . . .

RTC interprets this language broadly to not only allow, but to require the Commission to use this Docket as a vehicle to investigate compliance by telecommunications providers in Montana with a variety of provisions of state and federal telecommunications law. RTC writes:

RTC acknowledges that a primary focus of this case is upon the direct economic impacts upon Ronan Telephone Company and its customers from reciprocal compensation, . . . However, the statutory standards quoted above are much broader, and require an analysis of the impacts on all telecommunications users, and a broad analysis of public interest criteria.

RTC Response at 3. Specifically, RTC urges the Commission to investigate in this Docket whether BTC and its affiliated companies are improperly subsidizing competitive activities with money from regulated activities or other sources. RTC contends that the Montana Consumer Counsel (MCC), through his expert Al Buckalew, supports RTC's position on the scope of this proceeding.

The Commission does not agree with the expansive reading of 47 U.S.C. § 251(f)(2) by RTC. The Commission finds that, in light of the purpose and context of that section, it is more reasonable to interpret "users of telecommunications services generally" (47 U.S.C. § 251(f)(2)(A)(i)) as referring to users of telecommunications services in RTC's service area, and similarly that "public interest" in 47 U.S.C. § 251(f)(2)(B) refers to the public interest in the RTC service area. The Commission finds no merit in the assertion that proceedings under 47 U.S.C. § 251(f) should be used to investigate whether entities, who may seek to interconnect with a carrier who petitions under that section, are in violation of other provisions of the telecommunications law. Contrary to RTC, it appears that MCC witness Buckalew would agree with the Commission on this point:

Q: Is whether Blackfoot subsidizes its CLEC operation germane to the exemption requested by [RTC]?

A: No. Again, that issue should not be considered as a factor in determining whether Ronan is allowed to continue its rural exemption. . . . The issue

here is whether competition should be stopped. Focusing on the competitor and whether the competitor is using subsidies to compete should be subject to a Blackfoot-specific proceeding.

Direct Testimony of Allen G. Buckalew on Behalf of the Montana Consumer Counsel, August 1999, p. 9.

Pursuant to the Procedural Order in this Docket RTC has had the opportunity to make its case and to explore through discovery the positions of the intervenors. RTC has also had the opportunity to request relevant documents from intervenors. At hearing, RTC will have the further opportunity to test intervenor positions through cross examination. The Commission finds that it was not reasonable for RTC to subpoena information from a nonparty on issues not relevant to this Docket. For that reason, the Commission finds that BTC's motion should be granted.

The Commission will neither sanction nor seek sanctions against RTC for its actions to date in this Docket. Also, the Commission will not issue a protective order. RTC is advised that the Commission will dispose summarily of requests that repeat, in effect, requests that the Commission has already acted on.

#### Conclusions of Law

1. The Commission has jurisdiction over this proceeding pursuant to 47 U.S.C. § 251(f)(2) and § 69-3-834, MCA.
2. The Commission may lawfully control the process in contested cases. § 69-3-103, MCA.
3. The Commission has reasonably determined the proper scope of this proceeding, and that the subpoena duces tecum applied for by RTC is not reasonable.

#### Order

Blackfoot Telephone Cooperative's Motion to Quash the subpoena duces tecum requested by Ronan Telephone Company and issued by the Commission on August 17, 1999 is granted. Blackfoot Telephone Cooperative's request for sanctions is denied. Blackfoot Telephone Cooperative's request for a protective order is denied.

DONE AND DATED this 14th day of September, 1999 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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DAVE FISHER, Chairman

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NANCY MCCAFFREE, Vice Chair

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BOB ANDERSON, Commissioner

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GARY FELAND, Commissioner

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BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson  
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.